

Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea



Joint Civil Society Submission to United Nations Universal Periodic Review
on the situation of LGBTI persons and persons with HIV

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Submitted by the Rainbow Action against Sexual Minority Discrimination

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1. Executive Summary

- 1 The Rainbow Action against Sexual Minority Discrimination (henceforth “Rainbow Action”) has created and submits this report to the United Nations Human Rights Council on the occasion of the 28th Session. The Rainbow Action is a coalition of 27 NGOs in the Republic of Korea that advocate the human rights of LGBTI persons. This document has been created based on cases of human rights violations collected through the Rainbow Action’s activities, and the statistical data rely from sources including the National Human Rights Commission of Korea (henceforth “NHRCK”) and open media. This report is a collaborative effort by human right defenders from various organizations within the Rainbow Action. The following activists drafted this report: Byung-kwon Chang, Joon-tae Kim, In-seop Lee, Minhee Ryu, Hanhee Park and Da-rim Candy Yun. The report was translated by Yoo-suk Joseph Kim.
- 2 LGBTI persons in the Republic of Korea are subject to discrimination and stigmatization in both public and private spheres. According to the 2014 survey conducted by the NHRCK,¹ 44.8% of the respondents experienced discrimination in employment due to their identity and 14.1% of lesbian, gay, and bisexual persons and 16.5% of transgender persons were found to have been fired or recommended for resignation because of their identity. Also, discrimination against LGBTI persons and gender non-conforming youth is worse.² In the NHRCK survey on the hate speech in 2016, the respondents who experienced the most hate speech in both on-line and off-line were LGBTI persons. Even during the general election in April 2016, a protestant-backed political party which claimed to stop “the spread of *homosexuality*” earned 2.63 percent of total votes, which made it eligible for government subsidies.³

¹ National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

² “54% of LGBTQ youth said they were harassed by their friends.” National Human Rights Commission of Korea, Survey on the situation of discrimination based on sexual orientation and gender identity, 2014.

³ The Korea Herald, “ Religion-affiliated parties want to ‘protect’ country from Islam, *homosexuality*”, 11 April 2016. <http://www.koreaherald.com/view.php?ud=20160411001013>

- 3 Discrimination started from the Government. The Beyond the Rainbow Foundation, a LGBTI association, was denied its legal personality by the Ministry of Justice, ostensibly because the group works on a narrow human rights issue, which is sexual minorities, whereas the Ministry claimed that it can only register groups who work on broader “general human rights” themes.⁴ The Parade of the Korea Queer Festival in Seoul, a celebration of sexual minorities’ pride, was restricted by the police in 2015.⁵ The Ministry of Education has violated the right to information, health and education, which is a basic right of the youth, by excluding sexual minorities from the new sex education guidelines.⁶ Article 92-6 of the Military Criminal Act⁷ views consensual same-sex intimacy in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for such acts. In the Republic of Korea, where military service is mandatory (for a predetermined term) for most males, the clause constitutes a universal sodomy ban.⁸
- 4 Also, LGBTI persons are subjected to conversion therapy, which claims that “homosexuality” is “curable,” and transgender persons are forced to undergo irreversible surgeries for legal gender recognition or the determination of their exemption from mandatory military service. Intersex persons, especially infants, children and adolescents continue to face unnecessary medical interventions carried out without their free and fully informed consent.
- 5 Despite this widespread discrimination against LGBTI persons, the Republic of Korea failed to provide equal protection to LGBTI persons, which is guaranteed under the United Nations Charter, Universal Declaration of Human Rights, Human Rights Treaties that the Republic of Korea has ratified, and the Constitution of Korea.

⁴ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2. at para. 49.

⁵ Human Rights Watch, Dispatches: No Parade, but Pride Preserves in South Korea, 1 June 2015

⁶ Human Rights Watch, “South Korea Backslides on Sex Education”, 17 February, 2017

⁷ Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labour for not more than two years.

⁸ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011.
<http://www.koreaherald.com/view.php?ud=20111215000521>

2. Lack of Domestic Protection

A. Anti-discrimination Act

6 UN human rights institutions⁹¹⁰¹¹¹² and the UPR in second cycle¹³ have recommended the Government to legislate a comprehensive anti-discrimination law so that rights in all of these conventions and covenants can be enjoyed without discrimination. The Government stated, “Legislative procedures have been delayed due to continuing social controversies surrounding aspects including grounds for the prohibition of discrimination” in the mid-term report of the second cycle.¹⁴ However, it was the Government who caused a controversy at first, by excluding seven categories¹⁵ including sexual orientation from the Anti-Discrimination Bill in 2007.¹⁶ While the enactment of the law was thus being delayed, the Government neither disclosed its research for the legislation nor implemented public campaigns. Attempts to forge a cooperative relationship with civil society for the enactment were not made, either.

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea, 17 December 2009, E/C.12/KOR/CO/3, at para. 9.

¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations of the Committee on the Elimination of Discrimination against Women - Republic of Korea, 1 August 2011, CEDAW/C/KOR/CO/7, at para. 15.

¹¹ UN Committee on the Rights of the Child (CRC), Concluding observations: Republic of Korea, 2 February 2012, CRC/C/KOR/CO/3-4, at para. 29.

¹² UN Human Rights Committee (HRC), Concluding observations on the fourth periodic report of the Republic of Korea, 3 December 2015, CCPR/C/KOR/CO/4, at para. 12-13.

¹³ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 12 December 2012, A/HRC/22/10, at para. 124.24, 124.33. “124.24. Adopt the Anti-discrimination Act as a matter of priority while encompassing also grounds for discrimination on the basis of sexual orientation (Czech Republic); Include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation (Spain); 124.33. Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity (Argentina).”

¹⁴ Republic of Korea, Second universal periodic review mid-term progress update by the Republic of Korea on its implementation of recommendations made in October 2012, October 2012.

¹⁵ Seven deleted categories from 2007 Anti-Discrimination Bill: sexual orientation, military status, nationality, language, appearance, family type, ideology, criminal or detention record, and educational status.

¹⁶ Human Rights Watch, “South Korea: Anti-Discrimination Bill Excludes Many”, 6 November 2007. <https://www.hrw.org/news/2007/11/06/south-korea-anti-discrimination-bill-excludes-many>

B. Hate Crimes

- 7 A number of transwomen sex workers were robbed and assaulted by teenage boys in Namsan area in 2012. Police investigators said the perpetrators committed crimes because they thought that victims are not likely to report to the police.¹⁷
- 8 In 2011, in an area in the Jongno-gu district of Seoul where many bars for gay men are found, there occurred an incident in which a gay male couple was subjected one-sidedly to a mob attack by three men yelling insults such as “Faggot bastards.” In September 2013, an open wedding ceremony for the gay male couple Kim Seung-hwan and Kimjho Gwang-soo was held in Seoul. During the ceremony, a man in his 50s identifying himself as a church elder stormed on the stage and hurled feces. Subsequently, another man with a sign stating “Let’s smash gay marriage” attacked Kimjho as well. On August 16, 2016, again at the gay district of Jungno-gu, a member of the Korean gay men’s human rights group Chingusai’s gay choir G_voice was assaulted his face by a passer-by yelling hate speech such as “Homo bastards.”
- 9 Hate crimes also took place on college campuses. In 2014, 2015, and 2016, there were a series of incidents where posters and banners for LGBTI-related events, welcoming newly incoming queer students, and coming out in celebration of IDAHOBiT, were unfairly pulled down, damaged, or vandalized in a number of universities, including Seoul National University, Pusan National University, and Sogang University.

3. Criminalization

- 10 It is a violation of international human rights law to criminalize consensual sexual acts between adults of the same-sex.¹⁸ However, Article 92-6 of the Military Criminal Act¹⁹

¹⁷ Money Today, “Police arrested teenagers who threatened ‘Namsan Transgender’ sex workers.” 30 April 2012. (in Korean.)

¹⁸ Toonen v. Australia (CCPR/C/50/D/488/1992), UN Human Rights Committee, 4 April 1994.; CESCR, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 4 March 2016, E/C. 12/GC/22 at para. 23.

views such acts in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for homosexual acts. Although this clause has been revised many times amidst controversy, the essence that it is a sodomy clause remains unchanged. In the Republic of Korea, military service is mandatory (for a predetermined term) for most males. Consequently, gay men are stigmatized during military service as “illegal” beings.²⁰ Such stigmas and discrimination have been considerable restrictions on LGBTI persons’ enjoyment of rights. The Universal Periodic Review²¹ and the Human Rights Committee²² have recommended the Government to abolish the clause.

- 11 On July 28, 2016, the Constitutional Court of Korea ruled that Article 92-5 of the Military Criminal Act was constitutional (five judges: constitutional; four judges: unconstitutional). The Court stated, “It is highly likely for abnormal sexual acts between members of the same sex to occur in the armed forces” and “Even if any type of discriminatory treatment exists in comparison with soldiers who have engaged in sexual acts with members of the opposite sex, rational reasons for this [article] is acknowledged.” This decision was the third review of the sodomy clause in the Military Criminal Act over the past 14 years.²³
- 12 The 37th Division of the Republic of Korea army was belatedly discovered to have implemented measures including isolation, forced hospitalization without access to telephones and the Internet, and restrictions on off-duty passes, overnight passes, and leaves in the process of applying the crime of “disgraceful conduct” in the Military Criminal Act to one gay male soldier and conducting investigations. Although this

¹⁹ Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labour for not more than two years.

²⁰ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011.
<http://www.koreaherald.com/view.php?ud=20111215000521>

²¹ The United States’ recommendation: “to review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military.” UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 12 December 2012, A/HRC/22/10, at para. 124.34.

²² “The Committee is concerned about: ... (b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to Article 92-6 of the Military Criminal Act... repeal Article 92-6 of the Military Criminal Act.” HRC, UN Human Rights Committee: Concluding Observations: Republic of Korea (CCPR/C/KOR/CO/4, para. 14).

²³ Hankyoreh, “Constitutional Court upholds military’s ban on sodomy”, 8 August 2016.
http://english.hani.co.kr/arti/english_edition/e_national/755208.html

person filed a petition to the NHRCK in April 2016²⁴, after his discharge from the military, the Commission dismissed all facts of human rights violations in December 2016, claiming, “Because of the particular nature of military organizations, it is difficult to state clearly that the measures amounted to human rights violations.”

- 13 The Military Criminal Act already has separate provisions for rape and sexual molestation. Contrary to the Government’s defence, this anti-sodomy provision does not protect the victims from sexual violence, but rather punishes the victims. In 2011, there was a reported case when a straight superior perpetrator and a gay subordinate victim both got suspended of the sentence at the Navy Court under this article. The crime should be actually sexual assault since the perpetrator forced his gay subordinate to lick his genitalia. However, the Navy prosecutor indicted both of them under the consensual sodomy provision. Hence, the soldier who was a victim of sexual violence was punished for being gay and imprisoned.

4. Freedom of Assembly and Association

- 14 The Beyond the Rainbow Foundation, a LGBTI association, was denied its legal personality by the Ministry of Justice, ostensibly because the group works on a narrow human rights issue, which is sexual minorities, whereas the Ministry claimed that it can only register groups who work on broader “general human rights” themes.²⁵ The Foundation won the lawsuit against the Ministry of Justice in June 2016 and the MOJ appealed, but the appeal was rejected in March 2017.

- 15 In June 2014, the parade of the Korea Queer Festival in Seoul, a celebration of sexual minorities’ pride, came to a standstill for some four hours due to interference by anti-gay organizations. Although the organizers had reported the festival and the parade in

²⁴ Be minor, “For reasons of homosexuality, the soldier was isolated for five months. The Ministry of National Defense was sued under the NHRCK”, 25 April 2016. (in Korean)

²⁵ UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2. at para. 49.

advance, Seodaemun Police Station neither guaranteed the attendant rights nor made efforts to check the homophobic organizations that threatened and inflicted violence on participants in the festival and parade. The parade in June 2015 was initially banned by the police.²⁶ In 2016, an anti-gay group tried to block the event, filed a motion to the organizing committee for “obscenity”. However, the court dismissed the case.²⁷

5. “Conversion Therapy”

16 Various UN human rights institutions²⁸ and medical communities has condemned so-called “conversion therapy”.²⁹ However there are organizations in the Republic of Korea that offer professional “conversion therapy” counselor programs and implement education. In 2016, the press and media reported an incident in which a transgender woman escaped from a religious “conversion therapy” facility after being committed to it by her family and being subjected to violence under the pretext of “conversion therapy.”³⁰ Although religiously based, this facility is in fact operated for profit.

17 According to a 2016 survey, many LGBT youth suffer from unprofessional counseling, told “*homosexuality*” “can be cured”. Nearly 40% of 1,072 respondents reporting experiences with homophobic statements and other human rights violations by

²⁶ Human Rights Watch, Dispatches: No Parade, but Pride Preserves in South Korea, 1 June 2015

²⁷ New1, The court dismissed obscenity claim, 9 June 2016.

²⁸ CESCR, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 4 March 2016, E/C. 12/GC/22. at para. 23.
UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57. At para. 48. Also, see A/HRC/22/53. At para. 88.

²⁹ UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of China, 3 February 2016, CAT/C/CHN/CO/5. At paras 55-56. “Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called “conversion therapy”, and other forced, involuntary or otherwise coercive or abusive treatments against them.”

³⁰ Newsjoy, “Are transgender people cured if you beat them? Healing counselling by pastors without understanding of sexual minorities... Preposterous lectures given to exorcise evil spirits”, 2 March 2016. (in Korean).
<http://www.newsjoy.or.kr/news/articleView.html?idxno=202241>.

counselors they turned to for psychological help.³¹ Certain religious circles have argued that “ex-gay (dehomosexualization) is a human right” in order to justify “conversion therapy” and that sexual orientation was “curable.” The Ministry of Health and Welfare and expert organizations have not expressed any opinions on this.

- 18 Although the Human Rights Committee recommended in 2015 that government/public buildings not be used for “conversion therapy” events,³² such events have continued to be held in the National Assembly building.^{33 34}

6. LGBTI Youth

A. Right to Education and Right to Health

- 19 According to a survey conducted by the Seoul Metropolitan Government in 2014, the ratios of LGBTI adolescents who responded that they had heard hate speech against LGBTI persons amounted to approximately 80% depending on the type of hate speech, which are high figures. In addition, according to a 2014 survey conducted by the NHRCK, 80.0% and 92.0% of LGBTI adolescents had been subjected to hate speech from their teachers and other students, respectively. Indeed, in September 2016, the media reported an incident in which a teacher at a middle school in Seoul had denigrated, expressed hatred for, and presented distorted images of LGBTI persons in class.

- 20 According to a 2014 survey conducted by the NHRCK, out of LGBTI respondents who had experienced discrimination and harassment, 58.1% had experienced depression,

³¹ TheHankyoreh, “Depressed LGBT youth told by counselor, ‘Choose not to be gay.’”, 24 February 2016. http://english.hani.co.kr/arti/english_edition/e_national/784066.html

³² “15. The State Party should ... avoid the usage of State-owned buildings by private organizations for so-called ‘conversion therapies’...” CCPR/C/KOR/4 at para. 15.

³³ Gay Star News, “South Korean government slammed for hosting ‘conversion therapy’ seminars”, 8 April 2015. <http://www.gaystarnews.com/article/south-korea-government-slammed-hosting-conversion-therapy-seminars080415>

³⁴ OutRight Action International, “Outright Letter to Officials about State Endorsement of Conversion Therapy for Gays and Lesbians in South Korea”, 7 April 2015. <https://www.outrightinternational.org/content/outright-letter-officials-about-state-endorsement-conversion-therapy-gays-and-lesbians-south>.

46.2% had experienced a decrease in the motivation to learn, 19.4% had attempted suicide, and 16.1% had attempted self-harm, respectively. In addition, some had been forced to relinquish school activities by teachers and other students, and a considerable number of respondents who had experienced discrimination and harassment had missed school, relinquished advancement to higher-level schools, withdrawn from school, or transferred to other schools. In another survey conducted in 2014, 45.7% and 53.3% of LGBTI adolescents (aged 18 or below) responded that they had attempted suicide and self-harm, respectively.³⁵ Regarding an incident in which an LGBTI adolescent had committed suicide due to a homophobic group bullying at school, Busan High Court ruled in February 2014 that the school was not responsible for having violated its duty to perform protection and supervision with respect to the suicide.

- 21 A study conducted by LGBTQ Youth Crisis Support Center DdingDong reported an incident at a high school in Seoul where a sexual minority student had posted a handwritten poster protesting against hate speech directed at LGBTI persons at school, in response to which the school had threatened to track down the person who had posted the poster on grounds that it had not obtained permission in advance. In September 2014, the Ministry of Education transmitted a textbook-related civil petition raised by anti-LGBTI organizations to the Korea Authorized and Approved Textbook Association. In the process, it ordered the Association to collect and send a report on review results from the publisher of the textbook in question. Kyohaksa, a textbook publisher, considerably revised contents on LGBTI persons in its *Daily Life and Ethics*, a high school textbook, in 2014 due to demands made by anti-LGBTI organizations and conservative Protestant groups in 2013.
- 22 LGBTI adolescents constitute a vulnerable group, at the greatest risk of being exposed to hate speech and bullying and of prematurely terminating their studies. Also, mental health and suicidality of LGBTI adolescents is also worth attention.

B. Comprehensive Sex Education

³⁵ Korean Gay Men's Human Rights Group Chingusai, South Korean LGBTI Community Social Needs Assessment Survey (Jun. 14, 2014).

- 23 States have an obligation to provide age-appropriate, evidence-based, scientifically valid, and comprehensive education on sexual and reproductive health for everyone.³⁶ In distributing the *National-level School Sex Education Standards* in February 2015, the Ministry of Education conveyed to the sex education personnel and schools across the country its policy of prohibiting allusions to homosexuality, diverse sexual orientations, and human rights of LGBTI persons. The training material to be transmitted to teachers and other sex education personnel included the instruction “The term ‘A variety of sexual orientations’ is prohibited from use and demanded to be deleted from the [*National-level School*] *Sex Education Standards*” and, moreover, stipulated the policy of “Human rights of sexual minorities: Contents on sexual minorities are demanded to be deleted.”
- 24 In September 2016, the Ministry of Education retracted its prescheduled support to the Seoul Metropolitan Office of Education on grounds that sex education training for teachers including contents on LGBTI persons’ human rights did not agree with the *School Sex Education Standards*. The organ that had created this training disclosed through the press that “The Ministry of Education [had] requested the lecture to be stopped.”³⁷
- 25 When social controversy ensued, the Ministry of Education made small revisions for approximately one year. However, in January 2017, it once again stated that contents on LGBTI persons could not be included in the *School Sex Education Standards*.³⁸

³⁶ “States must develop and enforce evidence-based standards and guidelines for the provision and delivery of sexual and reproductive health services, and such guidance must be routinely updated to incorporate medical advancements. At the same time, States are required to provide age-appropriate, evidence-based, scientifically accurate comprehensive education for all on sexual and reproductive health.” CESCR, General Comment No. 22: On the Rights to Sexual and Reproductive Health (art. 12, para. 47, Mar. 4, 2016, E/C.12/GC/22). Also, see CESCR, General Comment No. 14; CEDAW, General Recommendation No. 30, para. 52(c); and CRC, General Comment No. 15, para. 54.

³⁷ Human Rights Watch, “Letter to the Government of South Korea on the Need to Recognize Sexual Orientation and Gender Identity in Sex Education” (May 3, 2015). <https://www.hrw.org/news/2015/05/03/letter-government-south-korea-need-recognize-sexual-orientation-and-gender-identity>; Human Rights Watch, “Letter to the Government of South Korea on Human Rights and Comprehensive Sexuality Education” (Jul. 21, 2015). <https://www.hrw.org/news/2015/07/21/letter-government-south-korea-human-rights-and-comprehensive-sexuality-education>.

³⁸ The Korea Times, “Homosexuality missing from sex education”, 18 January 2017. http://www.koreatimes.co.kr/www/news/nation/2017/01/181_222534.html.

7. Rights of Transgender Persons

A. Forced Sterilizations of Transgender Persons

26 Since a 2006 Supreme Court decision,³⁹ matters to be investigated with respect to legal gender change have been presented according to the Supreme Court's established rules instead of laws in the Republic of Korea.⁴⁰ Despite the use of the expression "matters to be investigated," which connotes discretion, courts have accepted this as a de facto precondition. According to these established rules, out of non-married adults without legally minor children, only those who have been diagnosed with '*transsexualism*', received psychiatric/hormone therapy, and undergone sterilization surgeries are eligible for legal gender change. Other materials such as parents' written consent, too, are included in the "matters to be investigated." On the other hand, while there is a legal precedent from a lower court that external genital reconstructive surgeries are not necessary for transgender men⁴¹ and women⁴², it is unclear whether other jurisdictions would make the same ruling. Overall, the surgical requirement forces on transgender persons indiscriminate and invasive surgeries for gender recognition and restricts reproductive rights as well.

B. Forced Sterilizations during the Draft Physical Examination

27 Transgender women are classified as having "gender identity disorder" according to the Regulations on Examination Such as Draft Physical Examination. The degree of these people's "GID" is evaluated as light/medium/severe according to the Global Assessment of Functioning (GAF). In addition to the GAF, military physicians' personal judgments are

³⁹ Supreme Court of Korea, 2004Su42 Decision, 22 June 2006.

⁴⁰ Guidelines on the Clerical Processing of Cases of Transsexuals' Application for Legal Sex Reassignment (revised on Jan. 8, 2015 [Established Rules on Family Relationship Registration No. 435; implemented on Feb. 1, 2015]; in Korean). English translation by Korean Society of Law and Policy on Sexual Orientation and Gender Identity is available at http://annual.sogilaw.org/review/law_list_en

⁴¹ The Hankyoreh, "Landmark Legal Ruling for South Korean Transgenders." 16 March 2013. http://english.hani.co.kr/arti/english_edition/e_national/578323.html

⁴² The Hankyoreh, "The court first grants legal gender change for a transwoman without genital reconstructive surgery." 16 February 2017. (in Korean) http://www.hani.co.kr/arti/society/society_general/782866.html

used to make assessments. Even though judgments on “GID” can be substituted by written psychiatric diagnoses, the GAF, which is deficient in objectivity, has been used.

- 28 Also, the Military Manpower Administration, the government agency in charge of conscripting and managing soldiers, has deferred the enlistment⁴³ of transgender persons for the reason of suspicions of undue exemption from mandatory military service and suggested or demanded these people to undergo irreversible surgeries including orchiectomy (testicle removal) and gender ‘reassignment’ surgeries, whose results are “externally visible.”⁴⁴ Consequently, surgeries have been forced on individuals, regardless of their bodily integrity, autonomy and self-determination, for the determination of lawful exemption from military service.

8. Rights of Intersex Persons

- 29 In the Republic of Korea, intersex persons have been largely invisible. Statistically, newborns in the country amount to approximately 450,000 per year, out of whom 0.1%, or some 450, are presumed to have Klinefelter syndrome.⁴⁵ There are additionally many other intersex variations, affecting estimates of up to 1.7% of the population. Consequently, the number of intersex newborns could be as many as 7,650 a year.⁴⁶ In

⁴³ Article 14 (Final Determination of Physical Grades) Clause 2. In the case of persons with grades 4, 5, or 6 who require verification of the history of their treatment of the relevant diseases or have received operations for reasons other than diseases or mental or physical disorders and require continued treatment, the determination of their physical grades may be deferred and their physical grades may be determined after verifying the history of their treatment of the diseases or through re-examination after the termination of the treatment.

⁴⁴ SOGILAW, Human Rights Situation of LGBTI in South Korea 2014, “A transgender person files a petition to the National Human Rights Commission of Korea in response to the surgery requirement by the Military Manpower Administration”. http://annual.sogilaw.org/review/review_2014_en/509

⁴⁵ Asan Medical Center, An Encyclopedia of Diseases (in Korean).
<http://www.amc.seoul.kr/asan/healthinfo/disease/diseaseDetail.do?contentId=32375>.

⁴⁶ Number of intersex persons who claimed medical expenses from the National Health Insurance Service in 2015 - Healthcare Bigdata [sic] Hub (operated by the Health Insurance Review and Assessment Service; in Korean).
<http://opendata.hira.or.kr/op/opc/olap3thDsInfo.do>.

2014, the press reported an incident in which a mother killed both her one-month-old infant -born with Klinefelter syndrome- and herself out of despair.⁴⁷

- 30 In order for parents to register the birth of a child, they must select the legal gender of the child between male and female and record it in the reporting form according to the Resident Registration Act. To change this gender later, one must undergo legal gender change application procedures. In addition, it is general in the country for adults including parents and teachers to educate children based on gender binarism even during socialization and public education processes. For these reasons, parents decide on the legal gender of their children without the latter's consent and impose irreversible surgeries on the youngsters as well. In such cases, the physical sex characteristics of children is known to be "corrected" before 12 months for females and before school age for males, respectively.⁴⁸

9. Recognition of Same-sex Relationships

- 31 In 2014, Seodaemun-gu Office, the local government of a ward in Seoul, rejected a gay male couple's application to register their marriage. Stating, "Even if diverse circumstances surrounding the institution of marriage have changed in this age, society, and international community, 'same-sex unions' cannot be seen as being allowed as 'marriages' based solely on the theory of legal interpretation under the current laws without separate legislative measures," the court dismissed the couple's application for objection to the rejection in May 2016 and dismissed the appeal in the appellate trial in December of the same year.⁴⁹

⁴⁷ Kyunghyung Shinmun, "Incumbent female police officer found dead at home with month-old son", 23 December 2014. (in Korean). http://news.khan.co.kr/kh_news/khan_art_view.html?code=940100&artid=201412230908381

⁴⁸ Medical Today, "'Is it a boy or a girl?' What's the sex of [physically] ambiguous newborns?", 28 June 2007. (in Korean). <http://bit.ly/2jsYKDg>.

⁴⁹ Yonhap news, "S. Korean court rejects gay couple's appeal over same-sex marriage", 6 December 2016. <http://english.yonhapnews.co.kr/news/2016/12/06/0200000000AEN20161206010400315.html>

- 32 Consequently, same-sex couples cannot obtain rights enjoyed by legally married opposite-sex couples including inheritance, medical self-determination, and pensions. As a result, surviving same-sex partners are at times subjected even to criminal prosecution on charges such as theft and fraud by family members who have inherited the property of deceased same-sex partners. According to the Civil Act, non-married persons are ineligible for full adoption. Also, lesbian couples are restricted in the right to access assisted reproductive technology.
- 33 In addition, the Government has not applied to non-married same-sex couples' rights that are acknowledged for non-married different-sex couples by laws and legal precedents. Consequently, same-sex couples in the country have experienced discrimination in the enjoyment of economic, social, and cultural rights including pensions, housing, and National Health Insurance.⁵⁰
- 34 The Life Partnership Bill, which would grant to two non-married persons sharing housing and livelihood the right to access social welfare including property issues before and after cohabitation, the right to medical self-determination, public housing, and National Health Insurance, and addresses issues of domestic violence in cohabiting relationships, was prepared.⁵¹ However, this draft bill was not proposed in the National Assembly.

⁵⁰ Rights recognized for non-married different-sex couples include: endowment of eligibility to enter senior welfare housing together (Article 1(2) of the Welfare of the Aged Act); succession to the right of lease of house (Article 9 of the Housing Lease Protection Act); endowment of eligibility to receive pensions (Article 3 of the National Pension Act, Article 3 of the Veterans' Pension Act, Article 2 of the Pension for Private School Teachers and Staff Act); inclusion in the scope of surviving family members (Article 5 of the Act on the Honorable Treatment and Support of Persons, Etc. of Distinguished Services to the State, Article 5 of the Act on the Honorable Treatment of Persons of Distinguished Services to Independence, Article 3 of the Act on Support for Persons Eligible for Veteran's Compensation, Article 15(3) of the Enforcement Decree of the National Sports Promotion Act, Article 48 of the Enforcement Decree of the Labor Standards Act, etc.); and application of exceptions to restrictions on permission for interviews (Article 38 of the Enforcement Decree of the Treatment of Protected Juveniles, Etc. Act). In addition, spouses in de facto or common-law marriages are included among "family members," who are eligible for both punishment and support with respect to the crime of domestic violence (Article 2(2) of the Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence).

⁵¹ SOGILAW, Human Rights Situation of LGBTI in South Korea 2015 "Continued discussion to establish the Life Partnership Act". http://annual.sogilaw.org/review/review_2015_en/1525

10. Rights of People living with HIV/AIDS

35 Refusal to perform operations on and medical discrimination against people living with HIV/AIDS have occurred at higher-level general hospitals and municipal hospitals as well. Even standard precautions created after recommendations that the Government devise and implement plans for the systematic implementation of education on the human rights of people living with HIV/AIDS for physicians and employees at clinics and medical institutions⁵² have been ineffective. Consequently, cases of refusal to examine and treat these people due to concern for HIV infection have continued to occur.⁵³ However, it is very difficult for patients or their families individually to petition to the NHRCK or to file a lawsuit in the court afterwards. Moreover, exclusion of and discrimination against people living with HIV/AIDS at medical institutions are far too rampant to be overcome through patients' individual efforts.

36 Furthermore, employees at medical institutions do not differ from the public in misconceptions of HIV/AIDS. According to "Development and Simulation of Routine HIV Testing System in Dental Clinic,"⁵⁴ 44% (209 persons) of the 475 dentists surveyed responded, "Infection is possible when bitten by a mosquito that has [already] bitten an AIDS patient." This is nearly identical to the results of a survey of 910 members of the public conducted in the same period (44%; 403 persons). In other words, the levels of misconceptions of HIV/AIDS are almost the same for dentists and the public alike.

37 In addition, when people living with HIV/AIDS including men who have sex with men

⁵² National Human Rights Commission of Korea, February 2007.

⁵³ In July 2011, tertiary referral hospital A did not perform total hip replacement (artificial joint surgery) on a person living with HIV/AIDS for the reason that it did not have "special gloves" for operations. In December 2015, tertiary referral hospital B refused to perform mastoidectomy and tympanoplasty (otitis media surgery) on a person living with HIV/AIDS for the reason that it did not have "screens" for operations. Seoul municipal hospital C refused to perform dental scaling on a person living with HIV/AIDS for the reason that "foam" could splatter. When this person protested, the hospital performed scaling after wrapping the dental chair and a screen approximately 1 m away completely with large plastic sheets, as is done when painting furniture or the home. In September 2016, tertiary referral hospital A refused to perform renal dialysis on a person living with HIV/AIDS who was in the final stage of chronic renal failure.

⁵⁴ Centers for Disease Control and Prevention, 25 August 2010. Study was conducted by the Chung-Ang University Industry-Academic Cooperation Foundation. (in Korean).

(MSM) use medical institutions, 21.6% have experienced hate speech or discriminatory attitudes toward their sexual identities from the medical personnel and no less than 40.5% have experienced discriminatory acts of having to use separate equipment or spaces for the reason of preventing infection during treatments, operations, and hospitalization.⁵⁵

- 38 Hospital-level medical institutions, too, have refused or discriminated against people living with HIV/AIDS. In the Republic of Korea, the medical system is divided into acute-phase diseases and long-term care. The Ministry of Health and Welfare revised Article 36 of the Enforcement Rule of the Medical Service Act so that people living with HIV/AIDS would not be included among those who were restricted from hospitalization at sanitarium hospitals and promulgated this rule in December 2015, thus allowing people living with HIV/AIDS to be hospitalized at such institutions. However, the Korean Association of Geriatric Hospitals “absolutely oppose[s] the hospitalization of AIDS patients at all sanitarium hospitals.”⁵⁶ Out of over 1,300 sanitarium hospitals, 75 are public ones (as of 2015). But even these are all consigned to the private sector, being “public” only in the form of their establishment. Consequently, it is difficult to realize the Government’s policies through public sanitarium hospitals.

⁵⁵ NHRCK, An Investigation on Medical Discrimination against People Living with HIV/AIDS, November 2016. (in Korean).

⁵⁶ (1) Because AIDS patients requiring medical care have complications such as tuberculosis, an infectious disease, there is concern about contagion to elderly patients, whose immunity is weak. (2) Safety problems including cases where the medical personnel have been bitten by AIDS patients are causes for concern as well. (3) The absolute majority of AIDS patients are male homosexuals and can sexually assault unconscious male patients in the same hospital rooms. (4) AIDS/homosexual organizations’ malicious petitions can lead to instability and anxiety in hospital management and patients.

11. Recommendations

1. Include sexual orientation and gender identity in the equality and non-discrimination clause of the Constitution.
2. Enact a comprehensive anti-discrimination law that prohibits all forms of discrimination, including sexual orientation and gender identity.
3. Abolish article 92-6 of the Military Criminal Act which criminalizes consensual sexual acts.
4. Provide all administrative, legislative, and judicial measures to prohibit discrimination on the basis of sexual orientation and gender identity at the central and local levels, including the establishment of a National Action Plan for LGBTI persons.
5. Take all necessary measures to prevent and investigate of homo/transphobic hate speech and hate crimes.
6. Ensure that LGBTI rights are guaranteed in curriculum and educational policies, including comprehensive sex education.
7. Encourage civil servants, judges, counseling specialists, and health professionals to undertake human rights education on sexual orientation, gender identity, and HIV/AIDS.
8. Exclude forced sterilization surgery, genital reconstructive surgery, and other surgical procedures for precondition of legal gender recognition of transgender persons.
9. Ensure the bodily integrity of intersex persons, especially infants, children and adolescents, by prohibiting unnecessary medical interventions carried out without their free and fully informed consent.
10. Take steps to ensure that same-sex couples are not discriminated in terms of economic, social rights and benefits, including legal recognition of same-sex marriage or civil union.
11. Take necessary measures to prevent infringement of health rights and discrimination such as people living with HIV and AIDS patients being denied access to medical institutions.
12. Ensure the freedom of expression, assembly, and association of LGBTI persons.